IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.517 OF 2005

Shri Baban Baburao Sutar .. Appellant

versus

Smt.Satyabhama Ganpat Pawar .. Respondent

Mr.U.B.Nighot for appellant

CORAM : P.V.KAKADE, J.

DATE : 8TH AUGUST, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Extra Joint District Judge, Pune dated 29th April 2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Khed partly decreeing the suit of the plaintiff.

2. I have heard the learned counsel for the

appellant. Perused the record.

3. The plaintiff had filed the suit for possession of the suit property and recovery of the rent amount on the ground that the defendant-tenant had committed breach of conditions of the contract of tenancy and had committed default in payment of rent and hence the tenancy was determined by notice dated 5.8.1995 with effect from 31.8.1995. The defendant contested the suit on various grounds including the ground that the suit notice was not served upon her.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the suit was notice was not properly served and refused to pass decree for vacant possession of the suit property, however, the decree for payment of arrears of rent came to be passed. Both the parties preferred appeals in the District Court, Pune. The learned lower appellate court judge after hearing both the appeals came to the conclusion that the trial court had properly adjudicated the dispute on merits and had recorded findings in correct manner and consequently both the appeals came to be dismissed. Hence the present appeal.

4. At the outset, it must be noted that there is no substantial question of law involved in this appeal. The only question is sought to be raised is to the effect that the suit notice dated 5.8.1995 was returned with endorsement as "unclaimed returned" and therefore, both the courts below had came to the conclusion that it was not a proper service. It is to be noted that the endorsement was not refusal to accept the notice, and therefore, "unclaimed return", according to both the courts below, was held to be not proper service and consequently the suit notice was held invalid. In my considered view, both the courts below have rightly appreciated the evidence holding that there was no proper service and said issue of fact is properly adjudicated. The learned counsel for the appellant sought to rely on judgment of a Single Judge of this Court wherein it is held that if the envelope of Registered A.D. is noted with proper and correct address, and the envelop returns with endorsement as "unclaimed" presumption should be raised regarding proper service. I prefer to disagree with this view. However, perusal of the said ruling, in my view, the same not applicable to the present case, as the case

involved in that ruling is that suit summons was also accepted by the servant of the concerned party and therefore, there was duel service and hence observation to that effect came to be made under such facts involved in that case, which are not applicable to the present appeal. Suffice it to say, therefore, that the findings recorded by both the courts below are proper and legal and therefore, it would brook no interference and the appeal stands dismissed.